

VERNER · LIIPFERT
BERNHARD · McPHERSON & HAND
CHARTERED

901 - 15TH STREET, N.W.
WASHINGTON, D.C. 20005-2301
(202) 371-6000
FAX: (202) 371-6279

WRITER'S DIRECT DIAL
(202) 371-6244

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December 29, 2000

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DEC 29 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

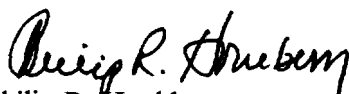
Re: Opposition to Petitions for Reconsideration of EchoStar Satellite Corporation and DIRECTV, Inc. filed by the Office of the Commissioner of Baseball, National Basketball Association, National Football League, National Hockey League, and Division 1-A Athletic Director's Association in CS Docket No. 00-2

Dear Ms. Salas:

Enclosed for filing please find the original and eleven (11) copies of the Opposition to Petitions for Reconsideration of EchoStar Satellite Corporation and DIRECTV, Inc., filed by the Office of the Commissioner of Baseball, National Basketball Association, National Football League, National Hockey League, and Division 1-A Athletic Director's Association in the above-referenced docket.

Please stamp and return to this office with the courier the enclosed extra copy of this filing designated for that purpose. Please direct any questions that you may have to the undersigned.

Respectfully submitted,


Philip R. Hochberg

Enclosures

No. of Copies rec'd 0+1/
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 29 2000

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In re Matter of:

Implementation of the Satellite Home
Viewer Improvement Act of 1999

Sports Blackout Issues

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CS Docket No. 00-2

OPPOSITION TO
PETITIONS FOR RECONSIDERATION
OF
ECHOSTAR SATELLITE CORPORATION
AND
DIRECTV, INC.

Philip R. Hochberg, Esq.
Verner, Liipfert, Bernhard,
McPherson & Hand, Chtd.
901 15th St., NW, Suite 700
Washington, D.C. 20005
(202) 371-6000

Robert Alan Garrett, Esq.
Arnold & Porter
555 12th St., NW
Washington, D.C. 20004
(202) 942-5000

December 29, 2000

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Matter of:)	
)	
Implementation of the Satellite Home)	CS Docket No. 00-2
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OPPOSITION TO
PETITIONS FOR RECONSIDERATION
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AND
DIRECTV, INC.

The Office of the Commissioner of Baseball ("Baseball"), the National Basketball Association ("NBA"), the National Football League ("NFL"), the National Hockey League ("NHL"), and the Division 1-A Athletic Director's Association ("Athletic Directors") (jointly "the Leagues") hereby file this Opposition to the Petitions for Reconsideration of EchoStar Satellite Corporation ("EchoStar") and DIRECTV, Inc. ("DIRECTV"), before the Federal Communications Commission, pursuant to Section 1.429(f) of the Commission's Rules, in response to the Report and Order in CS Docket No. 00-2, released November 2, 2000.¹

¹ FCC 00-388, __ FCC Rcd ___, 65 Fed. Reg. 68082 (Nov. 14, 2000) ("Report and Order").

ARGUMENT

The positions urged by EchoStar² in its Petition for Reconsideration (“Petition”) are not new and are totally without merit. EchoStar has had ample opportunities to show the Commission any basis for its claim that complying with blackouts will cause difficulties and great expense, yet has failed to do so. In its Petition, EchoStar again claims that the new rules will create chaos and will be burdensome and that the industry needs more time to consider how to comply. These arguments, in short, are simply not accurate and have already been rejected by the Commission.³

Indeed, satellite carriers at present are providing the very kind of local market blackout protection (pursuant to contracts they have entered into for out-of-market sports telecast distribution) that the Commission is ordering. As the Leagues showed in their Reply Comments,⁴ the major carriers already black out regular season and post-season sports events in particular areas of the country pursuant to their contractual distribution agreements with Regional Sports Networks and out-of-market agreements with the leagues. The carriers have shown the ability to abide by – and have certainly not complained about – blackout restrictions when it is in their economic self-interest to provide blackouts.

² With respect to the sports blackout issues presented here, the one paragraph filing by DIRECTV merely incorporates by reference the arguments made by EchoStar and therefore offers no independent basis for reconsideration. DIRECTV at 2.

³ Petitions for Reconsideration under Section 1.429 of the Commission’s Rules should offer new facts or policy for the Commission to consider. The Petitions by EchoStar and DIRECTV offer neither.

⁴ Reply Comments of National Basketball Association and National Hockey League at 3, Reply Comments of Baseball at 3-4, and Reply Comments of National Football League at 3-6.

Contrary to fact, EchoStar would have the Commission believe that there will be large numbers of sports deletion requests for nationally distributed superstations and for network stations, creating chaos as the satellite carriers attempt to comply with the rules. In fact, as EchoStar is well aware from years of complying with its contractually-mandated blackouts and from having already received the blackout request from the NBA for the remainder of the 2000-2001 season, requests will be limited in number and the burdens of compliance that EchoStar suggests simply do not exist.

Similarly, there is no basis for EchoStar's claimed concern about "a very localized event, a sports game, and the nationwide service provided by satellite distributors"⁵ because as EchoStar has demonstrated in complying with contractually-required blackouts, the distinction is meaningless when it comes to implementing local blackouts based on specific zip code information that in many cases, has already been provided to EchoStar.⁶ Indeed, it would be less burdensome for a nationwide service such as EchoStar to provide blackout protection than it would be for a nationwide MSO, such as AT&T Broadband, to provide such protections, since, unlike EchoStar, the MSO has the additional burden of communicating blackout requests to its decentralized headends.

(a) Transition Period

EchoStar's request that the Commission delay the imposition of the satellite rules for a full year, i.e., until two full years after the passage of the Satellite Home Viewer Improvement Act in November 1999, because it needs time to "assess," to "evaluate," and to "consider how best to

⁵ Petition at 6.

⁶ See, e.g., NBA blackout notice for Atlanta Hawks, provided to EchoStar on November 27, 2000 at Attachment A.

comply with deletion requests,” is disingenuous and should be denied. EchoStar has had 13 months to “assess” or “evaluate” the situation and has had years of experience complying with sports blackouts. The carriers have failed to show any need for yet a new “breaking-in” period to accomplish blackouts that are virtually identical to their present contractual requirements. There is no reason to punish programmers by granting a further delay.⁷

(b) Notice Periods for Sports Blackouts

EchoStar’s request for 60-days advance notice is nothing more than a transparent attempt to eviscerate the rule and undercut the Congressional mandate to provide effective blackout protections. It does this even though, as noted by the Commission in the Report and Order,⁸ a 60 day requirement is unnecessary and would play havoc with regular season blackouts.⁹ A decentralized cable industry, faced with many of the identical concerns in dealing with regulatory blackouts and with thousands of headends affected, has had no problems with the Commission’s current notice period of a minimum of six days in the 25 years that the rules have been in effect. Moreover, not allowing blackouts for “unscheduled events,” as EchoStar suggests, would

⁷ EchoStar brazenly suggests that the Commission should simply dictate that programmers wait a year. It says:

.. [R]ights holders would submit deletion requests sufficiently in advance to give satellite carriers the year that is needed to implement the requests *if the Commission simply required rights holders to do so.* (Italics in original.)

Petition at 5. The Commission, however, has already (and correctly) provided the protection required by Congress and the carriers would have to comply, *if the Commission simply required the satellite carriers to do so.*

⁸ See Report and Order at Paras. 68-69.

⁹ See Reply Comments of National Basketball Association and National Hockey League at 8:

DirectTV and EchoStar know that for the Commission to require a 60-day advance notice prior to the season would mean no protection whatsoever. Indeed, this may be the rationale behind seeking such early notice.

absolutely preclude protection for the post-season or games rescheduled for weather or other reasons, protection that EchoStar and other satellite carriers have provided routinely for years (when contractually obligated to do so).

If satellite carriers need only a couple of days advance notice to perform blackouts necessitated by regular season and playoff schedule changes,¹⁰ then requiring 60 days notice for initial blackout notices is unnecessary and excessive.

For EchoStar and the other carriers, a 60-day notice period would offer a convenient way of abiding by a blackout requirement without having to give blackout protection. Absent any showing that distinguishes the satellite carriers from cable operators or that explains why blackouts for superstations and network affiliates require 60 days notice while other blackouts (that the carriers routinely provide) do not, the Commission should reject the carriers' proposal out-of-hand.¹¹

(c) Network Station Blackouts

With respect to network station blackouts, EchoStar offers three arguments. First, EchoStar now tells the Commission (somewhat disingenuously) that, notwithstanding the directive of Congress and the Commission's request a year ago for specific information on any burdens which might arise by implementing blackouts:

¹⁰ See Reply Comments of National Basketball Association and National Hockey League at 9.

¹¹ The Commission should also note the argument made by the Leagues in their own Petition for Reconsideration, filed on December 13, 2000, about the wisdom of the 48-hour rule, an inefficient rule which will end up creating problems for the carriers and additional, unnecessary work for the Leagues. Reasonable changes – benefitting both the sports interests and the satellite carriers – were suggested in the Petition for Reconsideration filed by the Leagues.

...[T]here was simply no historical evidence available to satellite carriers to illustrate the burdens from *future* compliance with an unprecedented [sic] cluster of unpredictable [sic] short-notice blackout requests.¹²

Second, EchoStar states that it is “unreasonably onerous” to prove specific costs before blackout information is received from rights holders. Finally, EchoStar questions the wisdom of providing the sports interests with blackout protection.

It is far too late to entertain such hypothetical concerns or to second-guess decades of statutes, regulations, and court decisions providing such protection.

As to EchoStar’s first two points, the network blackout issue was raised nearly a year ago in the Notice of Proposed Rulemaking. The Notice specifically referred to the standard set forth in the Joint Explanatory Statement accompanying the passage of the Satellite Home Viewer Act, which required carriers to demonstrate “a very serious economic threat to the health of the carrier” in order to avoid the imposition of sports blackout rules.¹³ In response, EchoStar made a showing that it contended was sufficient to carry that burden. In the Report and Order, however, the showings of both EchoStar and DirecTV were dismissed as inadequate in four sentences by the Commission:

[DirecTV] asserts there will be “vast numbers of subscribers” and “thousands of blackout requests” creating a “monumental, expensive, and time-consuming task.” There are no specific costs provided. The Echostar comments offer even less specific information. Echostar provides no information about particular burdens that would be imposed by the requirement to black out sports events from network stations.¹⁴

¹² (Italics in original.) Petition at 7.

¹³ 145 Cong. Rec. at H11796 (November 9, 1999).

¹⁴ Report and Order at Para. 63.

The only citation made by Echostar in its Petition as a basis for injury which will be suffered is not to any new evidence or study; rather it points to the DirecTV offering that was discredited by the Commission – since, of course, EchoStar could not cite its own showing in the Comments. In the end, EchoStar still has not satisfied the Congressional mandate.¹⁵ Nor can it.

Indeed, if it were truly handicapped by a lack of specific information, EchoStar could have (and should have) posited a theoretical or worst-case blackout scenario in its Comments or in its Petition. It did not. Instead, EchoStar, in an attempt to satisfy the Congressional and Commission mandate for evidence of harm, simply mischaracterized the Commission's position on the issue and claimed that it did not have sufficient experience with blackouts to identify the costs.¹⁶ Neither argument has any foundation in fact nor comes close to satisfying the burden imposed by Congress.

Finally, since the benefits of the blackout policy have been sanctioned again and again by

¹⁵ See Reply Comments of National Basketball Association and National Hockey League at 2.

¹⁶ In its Comments, EchoStar had said:
As to sports blackouts, the Commission should *not* at this point impose any sports blackout rules on satellite carriers, at least with respect to network stations (where, as the Commission notes, the cost is especially unjustified in light of the rare occurrences in which a sports team would be capable of invoking the rule).
As the NBA and NHL stated in their Reply Comments at Note 6, not only did Echostar fail in its Comments to make any showing, but in its partial sentence parenthetical justification, it actually mischaracterized what the Commission said. The Commission said that “blackouts may ... present technological and economic challenges,” hardly a conclusion that costs are “especially unjustified.” (Emphasis added.) Notice at Para. 26. It was the obligation of Echostar to make the showing – which it continues to be unable to do, as shown by what it is content to say now in its Petition at 8:

It is unreasonably onerous to require satellite carriers to prove the specific costs of implementation before satellite carriers receive the information from rights holders that would facilitate such specificity.

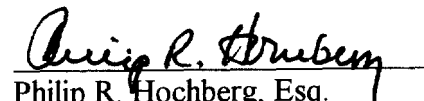
Congress,¹⁷ EchoStar's questioning of the policy is of no consequence, particularly in this forum.

CONCLUSION

For the reasons stated above and in their earlier Comments and Reply Comments, the Leagues urge adoption of regulations consistent with the positions taken.

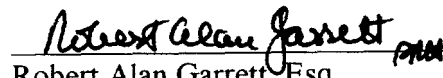
Respectfully Submitted,

NATIONAL BASKETBALL ASSOCIATION
NATIONAL FOOTBALL LEAGUE
NATIONAL HOCKEY LEAGUE
DIVISION 1-A ATHLETIC DIRECTOR'S ASSN.



Philip R. Hochberg, Esq.
Their Attorney
Verner, Liipfert, Bernhard,
McPherson & Hand, Chtd.
901 15th St., NW, Suite 700
Washington, D.C. 20005
(202) 371-6000

OFFICE OF THE COMMISSIONER OF BASEBALL



Robert Alan Garrett, Esq.
Its Attorney
Arnold & Porter
555 12th St., NW
Washington, D.C. 20004
(202) 942-5000

December 29, 2000

¹⁷ See Sports Broadcasting Act of 1961, 15 U.S.C. § 1292; Sports Blackout Law, Pub. L. No. 93-107, 87 Stat. 350 (1973); Telecommunications Act of 1996, Pub. L. 104-04, 110 Stat. 56 (1996); Satellite Home Viewer Improvement Act of 1999, P. Law 106-113, 113 Stat. 1501 (1999). Moreover, dozens of cases have been brought to enforce compliance with blackout rules; the Leagues are aware of no cases in which blackout rights have not been upheld.

VERNER · LIIPFERT
BERNHARD · MCPHERSON & HAND
CHARTERED

901 - 15TH STREET, N.W.
WASHINGTON, D.C. 20005-2301
(202) 371-6000
FAX: (202) 371-6279

November 27, 2000

Writer's Direct Dial:
(202) 371-6244
prhochberg@verner.com

Director of Programming Operations
EchoStar Satellite Corporation
5701 S. Santa Fe Dr.
Littleton, CO 80120

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Sports Blackouts

Dear Sir/Madam:

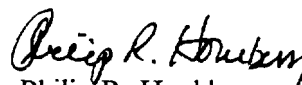
Subject to the provisions of new Section 76.127 of the Rules of the Federal Communications Commission, a request is hereby made by counsel for the National Basketball Association for protection against the importation of certain copyrighted NBA game telecasts.

Under tabs for each NBA team, at Attachment I, you will find a list of the affected Zip Codes in which mandated blackouts of subscribers must be made. At Attachment II, you will find all of the information required pursuant to Section 76.127(b), including the call letters of stations which you may be distributing. (At Attachment III, you will find a list of all stations on regional networks of member teams referenced as "Network" on Attachment II.)

Please be advised that certain NBA games broadcast in Chicago on WGN-TV will not be retransmitted outside of Chicago. Since Section 76.127 requires only that you protect against the distant signal importation of game broadcasts, the NBA asks that you exercise caution to insure that any non-game programming substituted on the WGN-TV signal retransmitted outside of Chicago not be deleted pursuant to this request.

Under the regulations of the Commission, you are duty bound to comply with Section 76.127. Moreover, pursuant to Section 504 of Title 17 of the United States Code, infringement of copyrighted programs can subject the infringer to statutory damages of from \$750 to \$30,000, with provisions for increasing these damages to up to \$150,000 for willful infringement.

Sincerely,


Philip R. Hochberg

05939.0001

enc.

ATTACHMENT 1

2000 ZIP CODE REPORT
FOR ATLANTA HAWKS

30001-99	30281
30001	30289
30101	30290
30114	30291
30130	30301-99
30132	31101-99
30134	30260
30135	30273
30136	30296
30137	30102
30141	30155
30144	30244
30174	30243
30180	30131
30185	30265
30187	30277
30188	30518
30201	30276
30205	30232
30207	30252
30208	30120
30209	30519
30211	30301 Center Zip
30213	
30214	
30221	
30228	
30235	
30236	
30245	
30247	
30248	
30249	
30250	
30253	
30263	
30267	
30268	
30269	
30274	
30278	
30280	

ATTACHMENT II

REQUESTING PARTY:

ATLANTA HAWKS

One CNN Center, Suite 405, South Tower
Atlanta, GA 30303

<u>Date</u>	<u>Local Broadcast Time</u>	<u>Duration</u>		<u>Distant Station</u>	<u>City of Distant Station</u>
2/14/01	7:30 pm	"	"	WCGV	Milwaukee
3/7/01	7:30 pm	"	"	KTXH	Houston
				and Network	
3/10/01	7:30 pm	"	"	WGN	Chicago
3/17/01	7:30 pm	"	"	WKBD	Detroit
				and Network	
3/22/01	7:30 pm	"	"	KBEJ	San Antonio
				and Network	
3/31/01	7:30 pm	"	"	KTVD	Denver
4/11/01	7:30 pm	"	"	WUAB	Cleveland
				and Network	
4/14/01	7:30 pm	"	"	WKBD	Detroit
				and Network	

NBA REGIONAL OVER-THE-AIR NETWORK STATIONS

Atlanta

WGNM, Macon, GA
WGVP, Valdosta, GA
WDNN, Chattanooga, TN
WABM, Birmingham, AL
WYLE, Florence, AL

Charlotte

WDRL-TV, Danville, VA
WUPN, Winston-Salem, NC
WKFT-TV, Fayetteville/Raleigh, NC
WEPX, Greenville, NC
WFXZ-TV, Jacksonville, NC
WMMP-TV, Charleston, SC
WWMB, Florence, SC

Cleveland

WWRD, Beavercreek, OH

Detroit

WTVG, Toledo, OH
WHTV, Jackson, MI

Houston

KFXK, Longview, TX

Indiana

WTTK-TV, Kokomo, IN

Orlando

WTVX-TV, Ft. Pierce, FL
WTEV, Jacksonville, FL
WACX-TV, Tallahassee, FL

Philadelphia

WLYH-TV, Lancaster-Lebanon, PA

Portland

KLSR, Eugene, OR

San Antonio

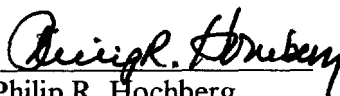
KXAN, Austin, TX
KNVA, Austin, TX
KCIT, Amarillo, TX

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of December, 2000, I caused a copy of the foregoing
OPPOSITION TO PETITIONS FOR RECONSIDERATION FILED BY ECHOSTAR
SATELLITE CORPORATION AND DIRECTV, INC. to be served by first-class U.S. Mail,
postage prepaid, on the following:

Pantelis Michalopoulos, Esq.
Steptoe & Johnson, LLP
1330 Connecticut Ave., NW
Washington, D.C. 20036
Counsel for EchoStar Satellite Corporation

Gary M. Epstein
Latham & Watkins
1001 Pennsylvania Ave., NW, #1300
Washington, D.C. 20004
Counsel for DIRECTV, INC.


Philip R. Hochberg